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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5
6 ANGELA ANAYA COLBERT,

7 Plaintiff(s),

8 v.

9 THE MOORE LAW GROUP, A.P.C., et al.,

10 Defendant(s).

Case No. 2:24-cv-00990-GMN-NJK

ORDER

[Docket No. 1]

11 Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to
12 28 U.S.C. § 1915 to proceed *in forma pauperis*.

13 **I. *In Forma Pauperis* Application**

14 Plaintiff filed an application to proceed *in forma pauperis* as required by § 1915(a). Docket
15 No. 1. Plaintiff has therein shown an inability to prepay fees and costs or give security for them.
16 Accordingly, the application to proceed *in forma pauperis* (Docket No. 1) will be granted pursuant
17 to 28 U.S.C. § 1915(a).

18 **II. Screening the Complaint**

19 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the
20 complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the
21 action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted,
22 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
23 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the
24 complaint with directions as to curing its deficiencies, unless it is clear from the face of the
25 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
26 F.3d 1103, 1106 (9th Cir. 1995).

27 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
28 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is

1 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723
 2 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
 3 showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v.*
 4 *Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations,
 5 it demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause
 6 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*citing Papasan v. Allain*, 478 U.S. 265,
 7 286 (1986)). The court must accept as true all well-pled factual allegations contained in the
 8 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.
 9 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do
 10 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from
 11 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
 12 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted
 13 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
 14 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

15 A. Federal Cause of Action

16 Plaintiff alleges that The Moore Law Group is a “debt collector” that used “unfair and
 17 unconscionable means” to collect a debt. Docket No. 1-2 at ¶¶ 21, 24.¹ The FDCPA maintains
 18 that “[a] debt collector may not use unfair or unconscionable means to collect or attempt to collect
 19 any debt.” 15 U.S.C. § 1692f. This section lists eight non-exhaustive examples of conduct that

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 26 ¹ Plaintiff also alleges a “conspiracy” between all Defendants as to these alleged actions.
 27 *See* Docket No. 1-2 at ¶ 25. Because the complaint does not sufficiently allege a violation of the
 28 Fair Debt Collection Practices Act (“FDCPA”), the Court need not opine on whether any other
 defendant may be held liable based on this conspiracy allegation. The Court notes, however, that
 it does not appear a conspiracy has been pled properly. *See, e.g., Burns v. County of King*, 883
 F.2d 819, 821 (9th Cir. 1989).

1 violates this section. *Id.*² “The Ninth Circuit has not articulated a standard for identifying ‘unfair
2 or unconscionable’ conduct outside of the eight examples listed in the statute.” *Cunningham v.*
3 *Meridian Credit Grp., LLC*, 2019 WL 643966, at *4 (C.D. Cal. Feb. 11, 2019). “District courts in

4 _____
5 ² The following practices constitute violations of section 1692f of the FDCPA:

6 (1) The collection of any amount (including any interest, fee, charge,
7 or expense incidental to the principal obligation) unless such amount
is expressly authorized by the agreement creating the debt or
permitted by law.

8 (2) The acceptance by a debt collector from any person of a check
9 or other payment instrument postdated by more than five days unless
such person is notified in writing of the debt collector’s intent to
deposit such check or instrument not more than ten nor less than
10 three business days prior to such deposit.

11 (3) The solicitation by a debt collector of any postdated check or
12 other postdated payment instrument for the purpose of threatening
or instituting criminal prosecution.

13 (4) Depositing or threatening to deposit any postdated check or other
14 postdated payment instrument prior to the date on such check or
instrument.

15 (5) Causing charges to be made to any person for communications
16 by concealment of the true purpose of the communication. Such
charges include, but are not limited to, collect telephone calls and
17 telegram fees.

18 (6) Taking or threatening to take any nonjudicial action to effect
dispossession or disablement of property if--

19 (A) there is no present right to possession of the property
20 claimed as collateral through an enforceable security
interest;

21 (B) there is no present intention to take possession of the
22 property; or

23 (C) the property is exempt by law from such dispossession
or disablement.

24 (7) Communicating with a consumer regarding a debt by post card.

25 (8) Using any language or symbol, other than the debt collector’s
26 address, on any envelope when communicating with a consumer by
use of the mails or by telegram, except that a debt collector may use
27 his business name if such name does not indicate that he is in the
debt collection business.

28 15 U.S.C. § 1692f.

1 the Ninth Circuit, however, have held that, when the conduct alleged is not ‘remotely similar’ to
 2 the enumerated examples, the conduct is not ‘unfair or unreasonable’ within the meaning of section
 3 1692f.” *Warner v. Midland Credit Mgmt., Inc.*, 540 F. Supp. 3d 946, 965 (C.D. Cal. 2021). “Other
 4 courts have noted the plain meaning of ‘unfair’ is ‘marked by injustice, partiality, or deception’
 5 and the term ‘unconscionable’ means ‘having no conscience’; ‘unscrupulous’; ‘showing no regard
 6 for conscience’; and ‘affronting the sense of justice, decency, or reasonableness.’” *Id.* (citing
 7 *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1200 (11th Cir. 2010)); *see also Riordan v.*
 8 *Jaburg & Wilk, P.C.*, 2010 WL 3023292, at *3 (D. Ariz. July 30, 2010).

9 Plaintiff here attempts to bring a claim under the FDCPA based on conduct related to
 10 obtaining a default judgment against her in state court. First, Plaintiff alleges that the affidavit of
 11 service for that state case was falsified, in that it indicated service had been made on a ““Co-
 12 Resident” named ‘Jane Doe,’” but that “Plaintiff does not reside with a ““Co-Resident” named Jane
 13 Doe.” Docket No. 1-2 at ¶ 13. Given the common understanding that the term “Jane Doe” refers
 14 to a woman of unknown identity, rather than a person with that actual name, this allegation does
 15 not cross the line from the conceivable to the plausible.

16 Second, Plaintiff alleges various clerical shortcomings with the motion for default
 17 judgment that was filed in state court. Plaintiff alleges that the affidavit referenced an “Exhibit
 18 A,” but that “no document identified as ‘Exhibit A’ [was] attached.” *Id.* at ¶ 14. Plaintiff also
 19 alleges that the affidavit was improperly notarized in various ways, including that the name of the
 20 subscribing witness was not clearly stated and that the signature line had an “unrecognizable
 21 signature.” *Id.* at ¶ 15. It is not clear from the allegations that the errors had any impact at all on
 22 the state proceeding and they do not appear similar to the statutorily enumerated examples of unfair
 23 or unconscionable conduct. The Court does not discern how these clerical issues (without more)
 24 equate to a cognizable legal claim.

25 In short, the allegations in the complaint fail to state a claim under the FDCPA. Plaintiff
 26 is afforded an opportunity to file an amended complaint if the deficiencies identified above can be
 27 corrected.

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1 B. State Causes of Action

2 Plaintiff's complaint includes three state law causes of action. Docket No. 1-2 at ¶¶ 28-41.

3 The Court declines to address these state law claims. Plaintiff's complaint alleges federal question
4 subject matter jurisdiction. *See* Docket No. 1-2 at ¶ 2. For the reasons discussed above, however,
5 Plaintiff's complaint fails to state a claim for relief on her federal cause of action. It is not clear
6 that the Court would exercise jurisdiction over the state law claims in this case. *See* 28 U.S.C. §
7 1367(c)(3); *see also Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997) (en banc).

8 The Court declines to screen Plaintiff's state law claims at this time.

9 **III. Conclusion**

10 Accordingly, **IT IS ORDERED** that:

11 1. Plaintiff's application to proceed *in forma pauperis* (Docket No. 1) is **GRANTED**.

12 Plaintiff shall not be required to pay the filing fee. Plaintiff is permitted to maintain
13 this action to conclusion without the necessity of prepayment of any additional fees or
14 costs or the giving of a security therefor. This order granting leave to proceed *in forma*
15 *pauperis* shall not extend to the issuance and/or service of subpoenas at government
16 expense.

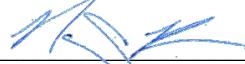
17 2. The Clerk's Office is **INSTRUCTED** to file the complaint (Docket No. 1-2) on the
18 docket.

19 3. Plaintiff's complaint is **DISMISSED** with leave to amend. Plaintiff will have until
20 **January 10, 2025**, to file an amended complaint, if the noted deficiencies can be
21 corrected. If Plaintiff chooses to amend the complaint, Plaintiff is informed that the
22 Court cannot refer to a prior pleading (i.e., the original complaint) in order to make an
23 amended complaint complete. This is because, as a general rule, an amended complaint
24 supersedes earlier pleadings. Local Rule 15-1(a) requires that an amended complaint
25 be complete in itself without reference to any prior pleading. Once a plaintiff files an
26 amended complaint, the earlier pleadings no longer serve any function in the case.
27 Therefore, in an amended complaint, each claim and the involvement of each defendant
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1 must be sufficiently alleged. **Failure to file an amended complaint by the deadline**
2 **set above will result in the recommended dismissal of this case.**

3 IT IS SO ORDERED.

4 Dated: December 13, 2024

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6 Nancy J. Koppe
7 United States Magistrate Judge

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